IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.12.2007

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION NO.35374 OF 2007

and M.P.Nos.1 to 3 of 2007

M/s. Sri.Graha Agencies
rep. By its Partnership
D.B.Vaidyanathan
Having Office atNo.7, Smith Colony
Ganapthypuram
East Thambaram
Chennai 600 059. .. Petitioner

vs.

1.The Deputy General Manager
Indian Oil Corporation Limited
Regional Office, Nungampakkam
Chennai 600 034.

2.The Chief Area Manager
Indian Oil Corporation Limited
Marketing Division
Indane Area Office
500 Anna Salai
Teynampet, Chennai 600 018.

3.The Area Manager
Indian Oil Corporation Limited
Chennai Area Office
500 Anna Salai
Teynampet, Chennai 600 018. .. Respondents

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Writ petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus to call for records relating to the order passed by the 1st respondent dated 16.11.2007 in TNL/S/385 and quash the same and direct the respondents to continue the supply of LPG Cylinders and allow the petitioner agency to run the business smoothly .

For petitioner :Mr.R.C.Paul Kanagaraj

For respondents :Mr.T.R.Rajagopalan,Sr.Counsel
for M/s.Anand, Abdul and Vinoth Assts.

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ORDER

The challenge in the writ petition is the order of the first respondent dated 16.11.2007 under which the first respondent has suspended the distributorship given to the petitioner for the sale of the Indian Oil Corporation Liquified Petroleum Gas (LPG) known as Indane in cylinders for house-hold customers. Admittedly, as per the agreement dated 07.02.2002 entered between the petitioner and the IOC, the respondent herein, the distributorship has been given to the petitioner. Clause 37 of the agreement contemplates the disputes to be referred to the Arbitrator. The said clause states as follows:

> "37. Any dispute or difference of any nature whatsoever or regarding any rights, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Managing Director of the Corporation or of some Officer of the Corporation who may be nominated by the Managing Director. The Distributor will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an officer of the Corporation or that he has to deal with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any other matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reasons, the Managing Director as aforesaid at the time of such transfer vacation of office or inability to act, shall designate another person to act as arbitrator in accordance with the terms of the agreement. Such persons shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of his contract that no person other than the Managing Director or a persons nominated by such Managing Director of the Corporation as aforesaid shall act as arbitrator here under. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to the agreement, subject to the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause."

2. The case of the petitioner is that on the basis of certain complaints a show-cause notice was issued to the petitioner by the respondent Corporation on 9.10.2007, directing the petitioner to give explanation for nearly 11 charges which are stated to be breach of contract of terms of agreement and also the misconduct on the part of the petitioner. The petitioner has given its explanation on 5.11.2007 and thereafter, the impugned order came

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to be passed finding that all the charges levelled against the petitioner as distributor have been proved. A reference to the impugned order shows that the petitioner who was given distributorship only in respect of house-hold customers has been diverting the same for commercial purpose also and on inspection, it was found that by diversion of Indane Cylinders which are to be supplied for residential purpose to commercial purpose, the respondent Corporation has incurred a loss to the extent of 67 lakhs. It is the case of the respondents as seen in the counter affidavit, that the petitioner got distributorship as a proprietary concern and whereas on enquiry it came to light that the petitioner in fact has entered a partnership with his brother and the partnership deed was registered as early as 1988 and the petitioner has suppressed the material fact and obtained the distributorship in his name as if he is the sole proprietor. It is the further case of the respondent that the distributorship has been transferred to one Pattammal Agencies as an interim measure, after cancelling the petitioner's distributorship.

3. Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner would submit that to the show-cause notice issued by the respondent Corporation, the petitioner has given a detailed explanation. However, while passing the impugned order, the explanation has not been taken into consideration, and on the other hand, it is due to the personal vendetta of the third respondent, the impugned order has been passed suspending the distributorship of the petitioner.

4. Per contra, Mr.T.R.Rajagopalan,learned senior counsel for the respondent Corporation who has taken me to the contents of the counter affidavit to show as to how the cylinders meant for house-hold have been used for commercial purpose resulting in huge loss to the Corporation. According to him, the price of a cylinder meant for house-hold is Rs.288/-, whereas the price of a cylinder supplied for commercial purpose is Rs.1160/- and therefore, by the conduct of the petitioner, he has not only earned huge benefit illegally, but also caused loss to the Corporation. In respect of the arbitration Clause, the learned senior counsel would submit that when the contract provides a clause for arbitration, the writ petition is not maintainable. To substantiate his contention, he referred to the order of the Division Bench of this Court in the case of M/s.Kasturi Agencies rep. By its Manager vs. Indian Oil Corporation, Chennai Divisional Office rep. By its Divisional Manager in W.A.No.3812 of 2004 dated 19.4.2007, wherein the Division Bench has held that the writ petition is not maintainable when the agreement provides for arbitration in case of disputes. Therefore, the learned counsel submits that the writ petition itself is not maintainable.

5. This Court by order dated 20.11.2007, while ordering notice of motion, has granted interim stay for a period of two weeks. It is stated that a contempt application has been filed on the basis that the respondent Corporation has violated the stay order and the same is pending. In the contempt application, on the basis of the submission made by the learned counsel for the

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petitioner that the public are suffering a lot in the sense that they are approaching the petitioner every day for supply of gas, there appears to be a direction given permitting the petitioner to issue necessary slip to such customers making them to approach the third respondent in which event, the third respondent will see that the supply to the public is effected without any disturbance.

6. Considering the submissions made by the learned counsel for both sides and also taking into consideration of the presence of arbitration clause in the agreement dated 7.2.2002, the writ petition is not maintainable and it is liable to be dismissed. It is open to the petitioner to invoke the arbitration clause as per the agreement stated above. In the event of arbitration clause being invoked by the petitioner, the arbitration proceedings shall be completed expeditiously. In the meantime, till the arbitrator is appointed and a decision is arrived at, the arrangement as stated above, viz., that as and when the public approach the petitioner, the petitioner shall issue slip and ask them to approach the third respondent and in such event, the third respondent will see that the supply to the customers for domestic purpose is made without interruption.

The writ petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Deputy General Manager
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Chennai 600 034.

2.The Chief Area Manager
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3.The Area Manager
  Indian Oil Corporation Limited
  Chennai Area Office
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  Teynampet, Chennai 600 018.

1 cc to Mr.R.C. Paul Kanagaraj, Sr. 72724
1 cc to M/s. Anand Abdul Vinodh Associates, Sr. 72285

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